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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/425,739	10/22/1999	CHARLES A. PEYSER	020748.0104PTUS	9954

32042 7590 05/25/2006

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EXAMINER	
FADOK, MARK A	

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/425,739	PEYSER ET AL.	
	Examiner	Art Unit	
	Mark Fadok	3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 March 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-9* is/are pending in the application.

4a) Of the above claim(s) *2-4 and 6-9* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☑ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

The examiner is in receipt of applicant's response to election requirement mailed 2/8/2006, which was received 3/8/2006. Acknowledgement is made to the election of claims 1 and 5 without traverse. In regards to applicant's response to office action mailed 4/28/2005, received 7/28/2005, acknowledgement is made to the amendment to the specification, and to claims 1,2,4,5,6,7 and 8 and the cancellation of claim 3. In regards to the specification amendment, claims 5 and 6 as filed do not support this amendment, which is therefore not entered, and the USC 112 rejection remains as previously stated. In regards to the rejection on the merits the previous rejection is restated below, modified as necessitated by amendment.

Claim Rejections - 35 USC § 112

Claims 5 and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case the specification lacks support and description for the two denying steps. For the purpose of this office action the act of denying in claim 5 and 6 is defined as any bid that is not modified during the session (see applicant's response of 3/8/2006, page 9).

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 102

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al (US 6,047,274).

In regards to clam 1, Johnson teaches the current invention of a computer-implemented method for facilitating the purchase of a commodity product, but does not specifically mention that the product being purchased is a telecommunication service. Since the limitation of telecommunication service does not impart any

functionality, this limitation is considered to be non-functional descriptive material (see MPEP 2106(b)) and is therefore not considered to provide patentable distinction. The examiner contends that the system would work equally well with the distribution of any product.

storing in memory information associated with one or more of a plurality of service providers (col 7, lines 1-15),

the information being used to determine one or more responses to a request to purchase at least one telecommunication service (col 6, lines 10-15),

each of the one or more responses being associated with at least one of the plurality of service providers (FIG 15) and

each of the one or more responses being further associated with a related cost for the at least one telecommunication service (FIG 15, col 11, lines 55-65);

establishing a session over a network for considering the purchase of the at least one telecommunication service (col 12, lines 5-35);

receiving the request at a computer on the network, wherein the request is received after the information associated with one or more of a plurality of service providers is stored (col 12, lines 45-55, preset default bid);

determining the at least one response in response to the received request (FIG 4); and

preventing a requester from accepting the identified response after the session is terminated (col 12, lines 47-54).

In regards to claim 5, Johnson teaches denying access by the service providers to the stored information during the session (col 12, lines 10-55).

Response to Arguments

Applicant asserts that the examiner inappropriately cited the term "telecommunication service" as not functional descriptive material, Applicant claims that selling telecommunications services is some how patentably distinct, yet applicant has not provided any rationale for this assertion. The examiner further directs the applicant's attention to In Re Ngai (Fed Cir 03-1524, decided March 8, 2004, precedential opinion issued May 13, 2004), where the "The Board concluded that the only difference between the prior art and claim 19 is the content of the instructions. Finding that the content of the instructions was not "functionally related" to the kit, the Board concluded that claim 19 should be rejected as anticipated by prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including After Final communications labeled "Box AF"]

(571) 273-6755 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Mark Fadok

Patent Examiner